



September 10, 1999

Mr. Steven D. Monte
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-2524

Dear Mr. Monte:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 127264.

The City of Dallas Police Department (the "department") received a request for the complaint and personnel files of a certain employee. You seek to withhold only Investigation Control Number 99-002, which you contend is excepted from disclosure pursuant to sections 552.101, 552.103 and 552.108 of the Government Code. We assume that you have released the remaining requested information.

First, you assert that medical records are confidential under the Medical Practice Act (the "MPA"), V.T.C.S. art. 4495b, § 5.08(b), in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 5.08 of the MPA provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

We have reviewed the submitted records, and we found no medical records. Thus, you may not withhold any of the submitted records under the MPA.

Next, you assert that section 552.103 excepts the submitted information from public disclosure. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us that criminal prosecution is pending. However, you have not explained the nature of the criminal prosecution or how the requested information relates to the criminal litigation. Accordingly, we conclude that you have failed to meet the requisite showing of relatedness, and therefore, you may not rely on section 552.103 to withhold the information from the requestor.

You also contend that section 552.108(a)(1) of the Government Code excepts the requested information from disclosure. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime." The records at issue appear to concern a personnel matter, not matters related to law enforcement or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from an internal police investigation of a police officer's conduct, section 552.108 is inapplicable). Therefore, the department may not withhold the records under section 552.108.

Except for the home address which may be protected by section 552.117 of the Government Code, you must release the submitted information. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 127264

Encl.: Submitted documents

cc: Mr. Steven McCoy
11041 Mandalay
Dallas, Texas 75228
(w/o enclosures)